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Cynthia L. Johnson, Director
Cash Management Policy and Planning Division
Financial Management Service
U.S. Department of the Treasury
Room 420
401 14th Street S.W.
Washington D.C. 20227

Department of the Treasury
31 CFR Part 210
Federal Government Participation in the ACH
Proposed Rule

Dear Ms. Johnson:

You have requested comments in regard to this proposed rule for defining the rights and liabilities of the Federal Government participating in the ACH system. T. Rowe Price Associates, Inc., ("TRPA") appreciates this opportunity to provide input as to the implications the proposal would have on our firm and on corporate/vendor payments in general. TRPA is a registered investment adviser which, together with its affiliates, serves as investment adviser to more than 70 stock, bond and money market mutual funds. TRPA and its affiliates manage approximately $130 billion for over 5.5 million individual and institutional accounts.

TRPA commends the Federal government for taking a leadership role in promoting the use of EFT. In addition, the adoption of a substantial part of the NACHA rules is a very positive step in helping develop a universal ACH system.

You have solicited comment on the two general topics of vendor payments and enrollment.

ACH 007

T.RowePrice

Vendor Payments

For the benefits of electronic payments to be realized, the recipient of the payment must be able to apply the payment in an efficient manner. Although the proposed rule improves efficiency by requiring virtually all vendors to receive EFT, there is no language in the proposed rule, or in the proposed 31 CFR 208, requiring the paying agencies to provide remittance information **in any form**, let alone in an acceptable electronic format.

The electronic delivery of both payments and remittance information is now common for commercial payments and, indeed, for Federal payments in the Vendor Express program. The National Automated Clearing House Association ("NACHA"), for example, has developed standardized formats for addenda records to carry remittance information accompanying electronic payments. Further, NACHA has recently adopted a rule which requires every financial institution to make such remittance information available to any company requesting it. A major impetus for NACHA to adopt this rule was to be sure the banking infrastructure of the U.S. would be ready to support inclusion of remittance information with governmental electronic payments. We strongly recommend that, in the final rule, each agency be required to provide remittance information with every payment to a recipient and that the information be in the form of a standardized addenda record format or other form mutually agreeable to the agency and recipient.

Enrollment

The Federal Government has the opportunity to again demonstrate needed leadership by developing an automated enrollment process with the possibility to have universal application. To be universal, it should (1) provide automated enrollment for any type of payee, whether natural person or other entity, and (2) be a centralized process for enrollment with any and every agency (as a next alternative, it could be one standardized enrollment process required to be used by every agency). Such enrollment would not only speed and simplify the process of becoming enrolled with any agency, but should help insure subsequent payments being made correctly. If such a process were developed and implemented by the Federal Government, it could help adoption of similar processes in the private sector.

In regard to the specific proposals for how the Federal Government will or will not adopt the NACHA rules, we would make the following comments:

Sec. 210.4 (a) (1)

TRPA supports the proposal to provide for the RDFI to verify the identity of the recipient. RDFI's may be hesitant to adopt this role. However, doing so could be a significant positive step in the safety and security of the ACH system with better assurance that the intended recipient will actually receive the transaction.

Sec. 210.5 (a)

This section has the same problem as the language in proposed 31 CFR 210, Sec. 208.6 (a), regarding the ownership of the bank account receiving a credit transaction, particularly for recipients who are not natural persons. While benefit payments will generally be made to natural persons, we suggest the language in this section be broaden so as to not preclude the efficient receipt of benefit payments which may be for an organization. Section 210.5(a) reads, in part, "...such account shall be in the name of the recipient...." To make bank account management more efficient, many organizations have adopted the practice of using one general bank account to handle the receipts (and payments) of any number of subsidiaries, departments, plants, divisions, etc. The organizations using such arrangements have accounting and recordkeeping to assure the transactions are applied to the proper unit. The proposed requirement that every unit of an organization that does business with the Federal government have a bank account in its own name to receive government payments is contrary to modern cash management and bank management practices. This proposed requirement would result in a significant reduction in efficiency, the opposite of the intended result.

The intent of the proposed language, presumably, is to be sure the intended recipient is receiving the payment. TRPA recommends the final rule incorporate a simple process whereby a recipient, who is not a natural person, could designate to the paying agency the bank account to receive its payments, regardless of the name and owner of that account.

Sec. 210.5 (b)(2)

In the TRPA response to proposed rule CFR Part 208, we discussed the problems with this similar section, and how the proposed wording would be detrimental to recipients of government payments and benefits who wish to use an investment account. In addition, these proposed rules would create major inefficiencies which could jeopardize the continued acceptance of Federal payments by the securities industry.

The proposed rule provides for benefit payments to an investment account. The intent of this proposed rule could be very beneficial to individuals and other recipients as the use of non-bank transaction and investment accounts is growing rapidly, and all-EFT payments could allow more efficient participation. TRPA has considerable experience with electronic payments from a variety of sources, as over 60% of our mutual fund purchase transactions are by ACH. In addition, we currently handle over 2.5 million ACH transactions per year for purchases and redemptions of our mutual funds.

Having payments received in an investment account is another example of the need to require agencies to provide remittance information for each payment. Without such information, the moneys transferred to such accounts will not be able to be applied to the appropriate individual mutual fund or brokerage account in an efficient manner.

There are two aspects of Section 210.5(b)(2) of the proposed rule which will cause difficulty for the securities industry. The first is the provision that, "(w)here a benefit payment is to be deposited into an investment account *established through a securities broker or dealer registered under the Securities Exchange Act of 1934*, such payment may be *deposited into an account in the name of the broker or dealer...*"(italics added). It could be argued that the wording of this provision would not permit benefit payments to an account in a mutual fund where shares of such fund are sold directly to investors, rather than through intermediaries, such as an unaffiliated broker/dealer. For these "direct-marketed" fund complexes, mutual fund transactions may be handled by the transfer agent for such funds. Like broker/dealers, direct-marketed fund complexes and their transfer agents are subject to oversight by the Securities and Exchange Commission. These fund families have been strong advocates of EFT and have devoted substantial resources to develop efficient procedures for accepting such payments. In addition, failure to recognize the scope and significance of this "direct purchase" market would severely jeopardize the current and future expectations of those investors choosing to have benefit payments directed to their mutual fund accounts. Accordingly, although the intention of this proposed section may have been to permit payments to be directed to such mutual fund accounts, we believe the text of the final rule should specifically reflect this intention. We recommend the final rule language, and accompanying explanatory text, include the fact that benefit payments may be directed to an investment account established through an investment company (commonly referred to as a mutual fund) registered under the Investment Company Act of 1940 or its transfer agent, and that such payments may be deposited into a bank account designated by such investment company or transfer agent.

The second aspect of the proposed language of Section 210.5(b)(2) which would cause difficulty to the securities and mutual fund industry lies in the provision that "...such payment may be deposited into an account in the name of the broker or dealer, *provided the account and all associated records are structured so that the recipient's interest is protected under applicable Federal or state deposit insurance regulations"* (italics added). Further, the explanatory notes to Section 210.5 state, "(t)he deposit of a benefit payment into an account owned by a third party raises concerns about the protection of the beneficiary's interests. The requirement that the account and associated records be structured so that the beneficiary's interest is protected under applicable Federal or state deposit insurance regulation is intended to address this concern." Compliance with this section would be very difficult for some firms and impossible for others.

Under current deposit insurance rules, while the investment money is in the bank account designated by the broker/dealer or mutual fund, FDIC, which is the primary deposit insurance provider, does not recognize the interests of anyone in the account but the owner. The FDIC will only provide deposit insurance to the broker/dealer or mutual fund transfer agent, up to the stated level of insurance, currently $100,000.

Depending on the nature of their operation, a broker/dealer or mutual fund transfer agent could receive investment money in many different accounts. For example, these different accounts

might be determined by geography, type of payment received, type of investment vehicle, or by bank. Federal payments will be to broker/dealer and mutual fund accounts which cover the full range of these variables. On any given day, such accounts might receive EFT investment payments from a wide variety of individuals, corporations, investment advisors, Federal agencies, etc. In addition, any given agency might be sending a "batch" of payments which could include investments to be made into a variety of mutual funds, variable annuities, specific securities, etc. Therefore, a broker/dealer or mutual fund transfer agent might not even know which of there accounts would be receiving the benefit payments.

Broker/dealers and mutual fund transfer agents receive payments from tens of thousands (and in some cases hundreds of thousands) of **different** investors each day. Moneys are deposited into a bank account at a financial institution and are moved out of that account on a regular basis and into the investment vehicle owned by the recipient. Note, please, this investment process has three steps, namely (1) the money is received in the bank account, (2) it remains there, for a period of time up to the next business day, while the specific investor and investment vehicle is determined (by an automated or manual process), and (3) it is then moved from the bank account into that investment. The point being that as soon as the recipient and the appropriate investment vehicle can be identified, the money is moved from the bank account. The proposed rule, however, calls for the broker/dealer or mutual fund transfer agent to identify the recipients - and somehow provide each with deposit insurance - during steps (1) and (2) of the above described process, **which is before that information has been determined**.

It has been suggested that some arrangement of "phantom accounts" or "sub-accounts" could be created to provide underlying deposit insurance. There is precedent for this idea in the "allotment" of pay of Federal employees, where the pay is directed to a bank which maintains a series of "sub-accounts" until the investment can be made. There are several reasons, however, why this process **should not be considered a model** for future electronic payments from the Federal government, including:

1. Today that pay allotment process delays the movement of money from the sub-account into the intended investment by as much as 4 days.

2. Some agencies, and/or the employees of some agencies, have already moved away from that pay allotment process and the pay is being sent by EFT directly to an account of the broker/dealer or mutual fund transfer agent and intermixed with EFT payments from all other customers.

3. Federal agencies, such as the Internal Revenue Service and the Social Security Administration, are currently sending EFT transactions directly to investment accounts, without the sub-account or underlying deposit insurance requirements.

4. Establishing and maintaining such a system is very costly and burdensome, with no demonstrable benefit.

5. In the entire range of payments taking place in the consumer and commercial marketplace today, there is no similar concept of the receiver of a payment somehow identifying, and providing deposit insurance to, each payee before the payment is applied.

6. This pay allotment process is a "closed system", with predefined customers, payment schedules, sources and dollar amounts. By contrast, in the future, Federal payments will be routed to investment accounts on an *ad hoc* basis for any customer, at any time, from any agency, and for any dollar amount.

In summary, TRPA recommends that Section 210.5(b)(2) should read, **"Where a benefit payment is to an investment account established through a broker or dealer registered under the Securities Exchange Act of 1934, or an investment account established through an investment company registered under the Investment Company Act of 1940 or its transfer agent, such payment may be deposited into an account designated by such broker or dealer, investment company or transfer agent."**

Sec. 210.8(a)

This proposal to have as RDFI receiving a prenotification to "...verify...at least one other identifying data element..." will provide further assurance that any future transactions go to the correct account. It may be difficult for RDFIs to conform to this requirement in a manual mode, but it is hoped such verification could become an automated process. If so, this is another situation for the government to provide leadership is making the ACH a more secure payment system and help making such a verification available universally for the private sector.

Thank you for this opportunity to provide comments on this important development.

Very Truly Yours,

Nolan L. North
Vice President and Assistant Treasurer
T. Rowe Price Associates, Inc.